

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION AT DAYTON**

JOHNNY LEE DUWE,

Plaintiff,

:

Case No. 3:25-cv-099

- vs -

District Judge Thomas M. Rose

Magistrate Judge Michael R. Merz

THE HONORABLE MARY E. MONTGOMERY

In her official capacity as Judge of the Montgomery  
County, Ohio, Court of Common Pleas, et al.,

Defendants.

:

---

**DECISION AND ORDER**

---

This case is before the Court Plaintiff's Objections (ECF No. 43) to the Magistrate Judge's Report and Recommendations (ECF No. 41) concluding Plaintiff should be denied leave to appeal *in forma pauperis*. As required by 28 U.S.C. § 636(b)(1) and Fed.R.Civ.P. 72(b), the Court has reviewed *de novo* the Report with particular attention to those portions objected to by Petitioner. Having done so, the Court finds the objections are without merit and they are OVERRULED for the reasons set forth below.

On June 30, 2025, the Court dismissed this case without prejudice because Plaintiff had not made proper service of process on any of the Defendants ((Decision, ECF No. 37). In doing so, the Court certified to the Sixth Circuit Court of Appeals that any appeal should not be permitted to proceed *in forma pauperis* because it would be frivolous.

Plaintiff nonetheless appealed (ECF No. 39) and at the same time sought leave to appeal *in forma pauperis* (ECF No. 40). The Magistrate Judge, who initially recommended a frivolousness certificate, adheres to that position (Report, ECF No. 41).

Petitioner's Objections are not well taken. Despite being alerted to issues with the purported service of process in this case, Plaintiff persisted in claiming that actual notice to the Defendants was sufficient. Since lack of service of process is an adequate basis for the judgment of dismissal and Plaintiff still submits no authority that actual notice is sufficient, any appeal would be frivolous.

Plaintiff's Motion for leave to appeal *in forma pauperis* is DENIED.

**DONE** and **ORDERED** in Dayton, Ohio, this Thursday, August 14, 2025.

s/Thomas M. Rose

---

THOMAS M. ROSE  
UNITED STATES DISTRICT JUDGE